

CITY COUNCIL MINUTES
December 3, 2012
REGULAR SESSION

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, December 3, 2012 at 6:00 p.m. with Mayor Hanley presiding and Deputy City Clerk Amy M. Lind recording the minutes.

CALL TO ORDER at 5:30 p.m.

ROLL CALL:

Council Members Present: Keith Nesbitt, J. M. "Mike" Holmes, William W. Kirby, Bridget Powers, Kevin Hanley

Council Members Absent: none

Staff Members Present: City Attorney Michael Colantuono, Community Development Director Will Wong, Associate Planner Lance Lowe, Fire Chief Mark D'Ambrogi, Transit Analyst Megan Siren, Administrative Services Director Andy Heath and Police Chief John Ruffcorn.

By **MOTION** adjourn to a Closed Session under Government Code Section 54956.9

MOTION: Powers/ Holmes/ Unanimously approved by voice

1. Conference with Legal Counsel:

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

Existing Litigation:
(G.C. § 54956.9(a))

Name of Case: *City of Auburn v. Sierra Patient and Caregiver Exchange, Inc. et al.*

Names of Parties: Plaintiff and Respondent – City of Auburn; Defendants and Appellants – Sierra Patient and Caregiver Exchange, Inc. and Richard Miller

2. Conference with Labor Negotiators:
(G.C. § 54957.6)

Agency Designated Representatives: Robert Richardson, Patrick Clark

Employee Group: Auburn Police Officers Association (APOA)

REPORT OUT OF CLOSED SESSION

Mayor Hanley reported that Council gave direction to the City Attorney on the existing litigation and also gave instructions to the labor negotiators regarding the APOA.

PLEDGE OF ALLEGIANCE

MAYOR'S COMMENDATIONS/PROCLAMATIONS/ACKNOWLEDGEMENTS/ANNOUNCEMENTS

A commendation was presented to Investigator Adam Cline for his hard work on a prescription drug case. The Drug Enforcement Agency also presented a certificate of appreciation to Investigator Adam Cline.

AGENDA APPROVAL

The agenda was approved by consensus of the Council.

CONSENT CALENDAR

Council Member Nesbitt removed item 1 from the consent calendar.

1. **Appointment of Planning Commissioner**

Removed from consent calendar, see item 4a.

2. **Funding Agreement with PCTPA for Bus Shelter Improvement Project**

By **RESOLUTION 12-126**, authorize the City Manager to execute the funding agreement with Placer County Transportation Planning Agency for the Bus Shelter Improvement Project.

3. **Multimodal Park & Ride Lot Paving Project – Notice of Completion**

By **RESOLUTION 12-127**, authorize the Director of Public Works to record a Notice of Completion for Simpson & Simpson, Inc. for the Multimodal Park and Ride Lot Paving Project.

4. **Auburn Municipal Airport – Construct Apron Lighting, Pavement Marking and Airfield Signage - Award**

By **RESOLUTION 12-128**, authorize the Director of Public Works to execute a construction contract with Vellutini Corporation (DBA Royal Electric) for the Auburn Municipal Airport Project A.I.P. 3-06-0012-11 – Construct Apron Lighting, Pavement Marking and Airfield Signage Project in an amount not to exceed \$94,548.30.

***** End of Consent Calendar *****

By **MOTION**, approve the consent calendar excluding item 1.

MOTION: Nesbitt/ Powers/ Approved 5:0

4a. **Appointment of Planning Commissioner**

Council Member Nesbitt said he would like to recognize Alan Young, his outgoing Planning Commissioner. He also introduced Roger Luebkehan, his new appointment to the Planning Commission.

Alan Young, outgoing Planning Commissioner, spoke about his time on the Planning Commission. He thanked staff and his fellow commissioners.

The Council Members then thanked Mr. Young for his hard work on the Planning Commission.

By **RESOLUTION 12-129**, appoint Roger Luebkehan to the Planning Commission.

MOTION: Holmes/ Powers/ Approved 5:0

5. **Public Comment**

The Council Members congratulated with Public Works Department on the hard work preparing for the storm that came through last weekend. They said they did an outstanding job proactively reducing the damage from the storm.

PUBLIC HEARING

6. **Mobile Food Vending on Private Property**

Associate Planner Lance Lowe presented this item. He reviewed the changes made to the ordinance since it was originally proposed. He said mobile food vendors would be prohibited in Old Town and Downtown, required to provide State Board of Equalization documents before obtaining a business license, requirement of gravel sites, use permit approvals, 2 hour time limit, restricted use of adjacent restrooms, one vendor per parcel and exceptions provided for parades, marches, assemblages and construction sites.

Council Member Kirby asked for a map showing the actual boundary difference between the "Historic Design Review District" and the "Historic Downtown and Old Town Districts".

Lance Lowe presented a map which shows the districts' boundaries (in file).

Mayor Hanley asked about the difference between the two historic districts.

Lance Lowe explained that the Old Town Historic District is a district that is on the national register. He said the design review district includes the same district with an additional periphery area.

Bob Snyder, resident of Auburn, said he is speaking on behalf of a voice not heard in Auburn, of young entrepreneurs. He said the action taken during the last discussion eliminated mobile food vending in Downtown unfairly. He said it is not the City Council's job to protect the brick and mortar businesses. He said a prohibition of this type of business goes too far.

Council Member Powers said she would like to see the smaller Downtown and Old Town Historic Districts be the prohibited areas. She said she would like to discuss including the Business Improvement District (BID) fees if applicable. She stressed the importance of a level playing field.

Council Member Kirby said if someone chooses not to be in attendance, their voices should not be expected to be heard (referencing previous public comment). He said mobile food vending is inappropriate in the historic districts. He said business will go where it is best served. He said he agrees that if a BID is involved, it should be part of the permit fee. He said it is not the Council's responsibility to level the playing field.

Council Member Holmes said although he disagrees with staff regarding the historic designations, he still supports the previous vote with the historic design review district map being used as the prohibited area.

Council Member Nesbitt said he would like to see a hybrid between the two maps because neither addresses all of his concerns.

Council Member Kirby asked about a possible compromise of excluded areas in these two districts.

Mayor Hanley said he disagrees with the public comment regarding Council being unaware of the difference of the districts on the map. He spoke about keeping healthy business communities, restricting historical districts, requiring BID fees, and adding a 100 yard distance requirement to brick and mortar businesses.

Council Member Kirby described the map and the 100 yard distance restriction and what it would mean for Downtown.

Council Member Nesbitt made a MOTION, to use OTBA/Downtown historic districts as prohibited areas, apply BID fees, and implement the 100 yard distance from any Brick and Mortar restaurant requirement. MOTION: Nesbitt/ Hanley/ motion withdrawn by Council Member Nesbitt.

City Attorney Michael Colantuono clarified how the 100 yard distance requirement would be determined. He said this could not be regulated in the public property section of the ordinance, only private property.

Community Development Director Will Wong spoke about the existing maps and the possibility of altering the excluded areas.

Council Member Kirby clarified how the 100 yard distance requirement would work.

Council Member Powers made a MOTION, to limit mobile food vending from operating in the OTBA/Downtown Historic Districts and apply BID fees if applicable.

MOTION: Powers/ Hanley/ defeated 2:3 (Holmes, Kirby, Nesbitt voted no)

Council Member Powers clarified that this ordinance regulates private land, in which the owner has to give permission to the food truck operator. She said this could always be discussed again in the future, and that trucks are only going to go to areas that are profitable to them.

Council Member Holmes said the Old Town District was designated through the national historic register; he said he does not know how the Downtown District became designated. He said he is concerned about mobile food vendors being allowed in these historic areas and the

enforcement of BID fees. He said he would like to put this item off to a future time where there could be an "equitable understanding."

Council Member Nesbitt said a hybrid map would need to be created to encompass significant properties.

Council Member Kirby asked about the permitting process.

Will Wong explained the BID fee and when it would be applicable.

Council Member Kirby made a MOTION, to limit mobile food vending from operating in the OTBA/Downtown Historic Districts, apply BID fees if applicable, and require a 100 yard distance from any restaurant. The motion was not seconded.

Discussion followed regarding the perimeters of the map to be used for the restricted area to protect historic districts.

Council Member Nesbitt suggested the Historic District Map be revised to include College/Oakwood/ Lincoln/ High St triangle extended to Harrison Avenue.

Council Member Kirby said with the revised map, the 100 yard distance requirement would no longer be necessary.

Council Member Holmes said he would still like to create a different map and come back at a future time.

Mayor Hanley said he agrees with the new map drawn. He said it makes a lot of "common sense."

Further clarification occurred between Council and Staff about the boundaries of the new map.

By **MOTION**, hold a first reading of this ordinance to regulate mobile food vending on private property, with the revised map of excluded areas (as Exhibit A, with no distance restrictions) and apply any applicable BID fees.
MOTION: Kirby/ Hanley/ Approved 3:2 (Nesbitt and Holmes voted no)

7. **Amendment of City Ordinance Limiting Liability – First Reading**

Michael Colantuono presented this item. He explained the need for this routine code maintenance amendment.

Mayor Hanley asked for an example of a type of situation where this may apply.

Michael Colantuono gave an example of a common scenario (standards in the code regarding physical improvements) where this type of liability would apply.

By **MOTION**, Waive full reading and introduce an ordinance to add Section 10.23 to the Auburn Municipal Code regarding limitation of tort liability for acts or omissions of City officers and employees.

MOTION: Nesbitt/ Holmes/ Approved 5:0

COUNCIL BUSINESS

8. Transparency in Bargaining

Mayor Hanley presented this item. He said this action would direct staff to report back to City Council with an analysis of a potential transparency in bargaining policy for the City. He said it would benefit the employees and the citizens of Auburn by allowing for more transparency. He then spoke of reasons why a transparency in bargaining policy would be beneficial. He said it's important financially for Council Members to make sure that the costs are sustainable going into the future. He said it would make clear the proposal to the whole bargaining unit. He also said it would eliminate the negotiator from putting forth the proposals that would directly benefit only that negotiator, at the expense of the other bargaining unit members. He said the City of Chico has adopted a similar policy. He said their policy states three elements: (1) to sunshine the initial proposals by the City and by the bargaining group on a City Council Agenda, (2) negotiate in closed session according to the law, and (3) when negotiations are concluded, the item is on the Council Business section of the agenda with a 2 week review process and a proper fiscal analysis.

Council Member Holmes asked if the City of Chico passed the memo that was included in the staff report.

Mayor Hanley said it has been in place for a couple years at Chico and they are now deciding to expand the policy at a City Council level.

Council Member Kirby asked the City Attorney if other cities have a policy to expose the initial proposals of the bargaining units and his opinion on this type of policy.

City Attorney Michael Colantuono said he has not seen this done, although a recent change in state law requires the City, before bargaining goes to impasse, to go through a fact finding process during which proposals are made public before the City can impose. He said this reflects a current trend, and this policy being discussed would be on the

edge of those trends. He also said with this type of policy, both parties in the negotiation will be aware that the public will know what the proposals involve. He explained pros and cons of transparency in bargaining policy.

Council Member Kirby said he supports this item, and that anytime the public is more aware of what is going on, it is a positive thing. He said he also supports the idea of a 5 year analysis on fiscal impact.

Council Member Nesbitt said he also supports the trend towards more transparency. He said he has worries about this opening up for posturing, but is willing to take the risk because it is good for the public to see more of the process and explains the long term effects of employee contracts.

Council Member Holmes said he also supports any effort to be more transparent.

Mayor Hanley indicated this would be brought back before Council sometime in January or February. He said he is proud of proposals that the City Council has put forward in the good times and the bad. He said these contracts are important for attracting good employees, keeping good employees, ensuring that the City is fiscally responsible, and getting the best municipal services to Auburn residents.

BY MOTION, direct staff to report back to the City Council with an analysis of a potential "Transparency in Bargaining" policy for the City of Auburn based on the experience of other local governments in California and whether it could benefit city employees and the residents of Auburn.

MOTION: Hanley/ Kirby/ Approved 5:0

REPORTS

9. City Council Committee Reports

Council Member Kirby reported on a discussion at the Wastewater Authority meeting regarding recent discussions with the County Supervisors regarding regional sewer. He commented on the drug case that was discussed during Investigator Adam Clines commendation. He also reported on the vacancy on the Planning Commission.

Council Member Holmes reported that the Ad Hoc Regional Sewer City/ County Committee sunset at the beginning of December.

Council Member Nesbitt reported that PCTPA met last week and discussed bus shelter improvements. He said a key direction they are heading is seeking ongoing funding for transportation programs. He reported on the abandonment of the "Wild and Scenic" designation for the

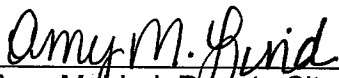
local parks area. He said the CA Parks Dept. is on board with the "Adventure Destination" and will be helping to create and oversee that project.

ADJOURNMENT

Mayor Hanley adjourned the meeting, without objection, at 7:50 p.m.



Kevin Hanley, Mayor



Amy M. Lind, Deputy City Clerk